of wide import and one of the meanings of the word is "to employ to any purpose" (see the judgment of Evershed M.R. in *Shell-Mex and B.P. Ltd.* v. *Clayton*[5]). This then is another reason why this appeal must fail.

In the result, I dismiss this appeal with costs. There will be the usual consequential order for payment to the Comptroller of Income Tax of the amount deposited in Court by Chandos as security for costs in this appeal.

Appeal dismissed.

Solicitors: *Lee & Lee.*

INTERNATIONAL TRUST & FINANCE LIMITED v. CHUI PUI CHENG

[A.C.J. (Chan Sek Keong J.C.) July 15, 1986]

[Singapore – Suit No. 4962 of 1985]

Stamp Duties – Deed of Acknowledgment of Debt – Whether "promissory note" within meaning of Stamp Duties Act – Principles applicable – Stamp Duties Act (Cap. 147), ss. 47 & 53.

Promissory Note – Meaning of – Principles applicable – Stamp Duties Act (Cap. 147), ss. 47 & 53.

The plaintiffs claimed $53,072.90 together with interest at the rate of 10.50% per annum from April 25, 1985, until the date of payment pursuant to the provisions of a Deed of Acknowledgment of Debt ("the Deed") made between the plaintiffs and the defendant.

The defendant did not deny the amount claimed but denied its liability to pay the same on the ground that the Deed was a promissory note, that it was stamped after the execution thereof and was therefore not admissible in evidence by virtue of section 53 read with section 47 of the Stamp Duties Act (Cap. 147).

The Deputy Registrar gave the defendant leave to defend upon provision of a bank guarantee of the amount claimed within 21 days from the date of the order. The defendant appealed.

Held, dismissing the appeal: (1) the principles applicable to the determination of the meaning of "promissory note" in stamp duty legislation are: (a) the statutory definition cannot be read literally as otherwise it would cover every document which contains a promise to pay, *e.g.* mortgages, debentures, bonds, agreements. The words "containing a promise to pay" must be the substance of the document, the whole content, and cannot mean containing a promise to pay forming one of a number of stipulations (*Mortgage Insurance Corporation Ltd.* v. *Commissioners of Inland Revenue*[2]); so if a document falls within the statutory definition, the court will still have to determine whether it is a promissory note as distinguished from something else (*British India Steam Navigation Co.* v. *Commissioners of Inland Revenue*[5]); (b) the intention of the parties as to whether a document containing a promise to pay is to be treated as a promissory note is relevant to determining its true character (*Yeo* v. *Dawe*[6] and *Mortgage Insurance Corporation Ltd.* v. *Commissioners of Inland Revenue*[2]);

(2) in this case the Deed was an acknowledgment of the defendant's liability for the balance of a mortgage debt and how it was arrived at. It was given for the purpose of carrying out a prior agreement between the parties. It referred to other matters in addition to the promise to pay. It was executed by both parties and was not a unilateral promise by the defendant. It was not intended as a promissory note and it certainly did not look like a promissory note.

Cases referred to:

(1) *Re General Estates Co. Ex parte City Bank* (1868) 3 Ch. App. 758.
(2) *Mortgage Insurance Corporation Ltd.* v. *Commissioners of Inland Revenue* (1888) 21 Q.B.D. 352.
(3) *Wirth* v. *Weigel Leygonie & Co. Ltd.* [1939] 3 All E.R. 712.
(4) *Nawab Major Sir Mohammad Akbar Khan* v. *Attar Singh* [1936] 2 All E.R. 545; A.I.R. 1936 P.C. 171.
(5) *British India Steam Navigation Co.* v. *Commissioners of Inland Revenue* (1881) 7 Q.B.D. 165.
(6) *Yeo* v. *Dawe* (1885) 53 L.T. 125.
(7) *Thomson* v. *Bell* (1894) 22 R. (Ct. Sess) 16.
(8) *Hodgkins* v. *Simpson* (1908) 25 T.L.R. 53.

APPEAL FROM REGISTRAR'S DECISION.

Lin Yuen Ming for the appellant/defendant.

Ms. Marilyn Tan for the respondent/plaintiff.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This appeal concerns a short but important point on the stamping of promissory notes under the Stamp Duties Act (Cap. 147) ("the Act"). It came before me by way of an appeal by the defendant against the decision of the Deputy Registrar giving him leave to defend upon provision of a bank guarantee of the amount claimed within 21 days from the date of the order.

The plaintiffs' claim is for $53,072.90 together with interest at the rate of 10.50% per annum from April 25, 1985, until the date of payment pursuant to the provisions of a Deed of Acknowledgment of Debt ("the Deed") made between the plaintiffs and the defendant on April 25, 1985.

The defendant does not deny the amount claimed but denies its liability to pay the same on the ground that the Deed is a promissory note, that it was stamped after the execution thereof and is therefore not admissible in evidence by virtue of section 53 read with section 47 of the Act. Plaintiff's counsel concedes that if the Deed

were a promissory note under the Act, the plaintiff would fail in its claim based on the Deed. The defence is wholly without merit apart from its technicality as there is no doubt that the defendant owed the amount claimed. It is not common knowledge that Singapore still has in its statute book a law which renders inadmissible in evidence any promissory note executed in Singapore (other than one issued by or in favour of or expressed to be payable by a bank or a merchant bank approved by the Minister) which is not stamped (at $1.00) prior to its execution, when, under the same statute, all the other chargeable instruments which are not duly stamped including promissory notes executed outside Singapore and instruments chargeable with *ad valorem* stamp duty, may be stamped at any time after execution upon payment of an appropriate penalty and thus rendered admissible in evidence.

The Deed, which was executed by both parties under seal, reads as follows:

"THIS DEED is made the 25th day of April One thousand nine hundred and eighty five (1985) Between CHUI PUI CHENG of No. 285 South Bridge Road, Singapore, Merchant (hereinafter called 'the Mortgagor') of the one part And INTERNATIONAL TRUST & FINANCE LIMITED a company incorporated in Singapore and having its registered office at No. 49 New Bridge Road, Singapore (hereinafter called 'the Mortgagee') of the other part.

WHEREAS by an Instrument of Mortgage (hereinafter referred to as 'the said Mortgage') dated the 30th day of May, 1983 (Registered in the Registry of Titles as Instrument No. I/43414C) and made by the Mortgagor in favour of the Mortgagee the land and premises described in the said Mortgage and more particularly described in the Schedule hereto were mortgaged to the Mortgagee for securing the repayment of the principal monies and interest thereon in accordance with the terms covenants and conditions therein contained.

AND WHEREAS on the 25th day of April, 1985 a sum of Dollars Five hundred and thirty thousand, three hundred eighty nine and cents forty ($530,389.40) being the principal and interest due under the said Mortgage is due and payable by the Mortgagor to the Mortgagee.

AND WHEREAS further interest at the rate of Dollars One hundred and forty eight and cents ninety three ($148.93) per day is payable from 25th day of April, 1985.

AND WHEREAS the Mortgagor has agreed to sell the land and premises described in the Schedule hereto (hereinafter referred to as 'the said land and premises') for only Dollars Four hundred and eighty thousand ($480,000.00) of which a sum of only Dollars Four hundred and seventy seven thousand, three hundred and sixteen and cents fifty ($477,316.50) will be paid to the Mortgagee.

AND WHEREAS the Mortgagee has agreed to release the said land and premises from the said Mortgage on the terms and conditions hereinafter appearing.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the Mortgagee releasing the said land and premises from the said Mortgage, the Mortgagor HEREBY ACKNOWLEDGES AND CONFIRMS that a sum of Dollars Fifty thousand, seventy two and cents ninety ($53,072.90) together with interest at the rate of Eleven and a half per centum (11½%) per annum from the 25th day of April, 1985, are still due and payable to the Mortgagee.

2. The Mortgagor HEREBY COVENANTS with the Mortgagee to:—

(a) Pay the interest on the aforesaid sum at the rate aforesaid, or at such other rate as the Mortgagee may determine, from the 25th day of April, 1985 up to and including the date of payment.

(b) Pay the aforesaid sum and interest due on demand in writing made by the Mortgagee to the Mortgagor.

IN WITNESS WHEREOF the Mortgagor has hereunto set his hand and seal the day and year first above written."

Counsel for the defendant says that the Deed is a promissory note because it falls within the definition of "promissory note" in the Act. The definition reads:

" 'promissory note' includes any document or writing, except a bank note, containing a promise to pay any sum of money; a note promising the payment of any sum of money out of any particular fund which may or may not be available or upon any condition or contingency which may or may not be performed or happen is to be deemed a promissory note for that sum of money."

This definition is substantially the same as that enacted in the stamp duty legislation of the United Kingdom.

He referred me to the case of *Re General Estates Co. Ex parte City Bank*[1] where it was held that an instrument, executed under the seal of the company, headed "debenture" and stamped as a deed by which the company "undertakes to pay to the order of J.H. on July 1, 1867" £1000, with half yearly interest, on presentation of the annexed interest warrants, was held to be a promissory note.

Counsel also argued that the fourth recital in the Deed which said that the defendant had agreed to the sale was incorrect. He pointed out that the actual transfer was executed by the plaintiff as vendor in the exercise of its power of sale as mortgagee. That being the case, the sale was a mort-

gagee's sale and not a sale to which the defendant, as mortgagor, had agreed, and therefore the principles applied in *Mortgage Insurance Corporation Ltd.* v. *Commissioners of Inland Revenue*[2] and *Wirth* v. *Weigel Leygonie & Co. Ltd.*[3] (cited by the plaintiff's counsel) had no application.

Counsel for the plaintiff submitted that the Deed was not a promissory note but an acknowledgment of a debt. The Deed was not negotiable and was never intended to be negotiable. The Deed also contained recitals which set out the background events leading to the execution of the Deed and that the court must take into account the circumstances surrounding its execution. She referred me to a ruling made by the Commissioner of Stamp Duties given to the plaintiffs' solicitors by letter dated January 16, 1986, in these terms:

"I would confirm that the abovementioned Deed cannot be construed as a Promissory Note under the Stamp Duties Act (Cap. 147) as a Promissory Note is a unilateral, unconditional promise in writing made by one person to another to pay a certain amount either on demand or as at a specified time. The abovementioned Deed on the other hand contains a covenant given by the Mortgagor to pay, conditional upon the Mortgagee releasing the land and premises from the mortgage."

The ruling is, of course, not binding on me, but that is not a reason for me to refuse to consider its merits.

Counsel also referred me to the following authorities: *Mortgage Insurance Corporation* v. *Commissioners of Inland Revenue*[2]; *Wirth* v. *Weigel Leygonie & Co. Ltd.*[3] and *Nawab Major Sir Mohammad Akbar Khan* v. *Attar Singh*[4] in support of her contention.

As to the submission of defendant's counsel that the fourth recital was incorrect, she referred to exhibits B8-11 in the affidavit of Benedict Chung, a manager of the plaintiffs, filed on July 18, 1986, which showed that the defendant had agreed to the sale. I wholly agree with this submission on the facts. The fact that the transfer was executed by the mortgagee as vendor was not inconsistent with the defendant having agreed with the sale. The form of the sale was only a means of transferring the property to the purchaser.

The Privy Council decision in *Nawab Major Sir Mohammad Akbar Khan* v. *Attar Singh*[4] is not relevant as it concerned the definition of a promissory note in the Indian Stamp Act which adopted a definition similar to that in section 88 of the Bills of Exchange Act (Cap. 28). That definition is narrower in scope. An instrument which is a promissory note for the purpose of the Bills of Exchange Act will invariably fall within the definition of a promissory note in the Act, but not necessarily vice versa. There was a good reason for this. The definition of promissory note for revenue purposes was more comprehensive than that contained in the Bills of Exchange Act or than the common law notion of a promissory note, as otherwise stamp duty could easily be avoided by the insertion of an unimportant condition in the instrument.

The case of *Ex parte City Bank*[1] cited by defendant's counsel is also distinguishable from the present case. The decision in that case was not on stamp duty but on whether the instrument was a negotiable instrument so as to enable the indorsee thereof to sue on the instrument.

The principles applicable to the determination of the meaning of "promissory note" in stamp duty legislation were settled a long time ago. These principles are:

(a) the statutory definition cannot be read literally as otherwise it would cover every document which contains a promise to pay, *e.g.* mortgages, debentures, bonds, agreements; the words "containing a promise to pay" must be the substance of the document, the whole content, and cannot mean containing a promise to pay forming one of a number of stipulations: Lindley L.J. in *Mortgage Insurance Corporation Ltd.* v. *Commissioners of Inland Revenue*[2]; so if a document falls within the statutory definition, the court will still have to determine whether it is a promissory note as distinguished from something else – Lindley J. in *British India Steam Navigation Co.* v. *Commissioners of Inland Revenue*[5] at page 172.

(b) the intention of the parties as to whether a document containing a promise to pay is to be treated as a promissory note is relevant to determining its true character, *e.g.* where it was given for the purpose of carrying out an agreement between the parties – see Brett M.R. in *Yeo* v. *Dawe*[6] and *Mortgage Insurance Corporation Ltd.* v. *Commissioners of Inland Revenue.*[2]

In a Scottish case, *Thomson* v. *Bell*[7], Lord M'Laren expressed the opinion that nothing could be a promissory note except a unilateral obligation, which

became effectual on delivery, and which required nothing to be done on the other side to make it operative. This view appears to have been adopted by the Commissioner of Stamp Duties in giving his ruling.

Applying the above principles, the courts have held the following documents were not promissory notes for the purpose of stamp duty legislation:

(1) An instrument which read: "I, J.H. Dawe, promise to pay Mr. Yeo, on his signing the lease of the Castle Inn, Plymouth, the sum of £150 – J.H. DAWE" – *Yeo* v. *Dawe.*[6]

(2) An instrument issued by a company incorporated under the Joint Stock Companies Acts, 1856 and 1862, purporting upon the face of it to be a "debenture," with coupons for the payment of interest half-yearly attached to it, and containing an engagement on the part of the company to pay "the amount of this indenture" to A.B. or order on a given day, with interest at 5%.

(3) An instrument which read: "In consideration of the agent's forbearance to sue, and of the fact that I shall not be registered as a defaulter ... I hereby undertake to pay the sum of £17.9.9 by July 9, 1908, and to make immediate arrangements with regard to the balance of £550." – *Hodgkins* v. *Simpson.*[8]

(4) An instrument which read: "Reference A.C.3 T.R./W.L.I.S. Kischner, London W.C.1. We confirm herewith that we undertake to pay you irrevocably the sum of £200 to you or into your banking account in respect of the above reference, on April 30, 1935." – *Wirth* v. *Weigel Leygonie & Co. Ltd.*[3]

There are many more decisions in the law reports which show that the mere presence of a promise to pay in an instrument does not stamp that instrument with the character of a promissory note as defined in the Act. I would include the Deed in the present case as amongst this category of instruments which are not promissory notes under the Act. The Deed is an acknowledgment of the defendant's liability for the balance of a mortgage debt and how it was arrived at. It was given for the purpose of carrying out a prior agreement between the parties – see *Yeo* v. *Dawe.*[6] It refers to other matters in addition to the promise to pay. It was executed by both parties and not a unilateral promise by the defendant. It was not intended as a promissory note and it certainly did not look like a promissory note.

The appeal was therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Lim Ganesh & Liu; Advani Hoo, Morris & Kumar.*

RE ARNOLD D. PALMER IN THE MATTER OF TRADE MARK REGISTRATION NO. 63249

[O.C.J. (Chan Sek Keong J.C.) November 27, 1986]

[Singapore – Originating Motion No. 18 of 1986]

Trade Marks – Register – Rectification – Application for – Whether applicant had bona fide intention to use trade mark – Trading interest – Whether aggrieved person – Trade Marks Act (Cap. 206), s.40.

Trade Marks – "Trafficking" – Meaning of – Trade Marks Act (Cap. 206), s.40.

On July 15, 1980, the applicant applied to the Registrar of Trade Marks, Singapore to rectify the Register of Trade Marks by removing therefrom Trade Mark No. 63249 registered in the name of Lim Mok Hui, Ang Lee Kim and Lim Ley Trading as Hui Cheng Dress Makers in Singapore. The mark consisted solely of a device of an umbrella and was registered in Class 25 in respect of shirts, dresses, pyjamas, shorts and T-shirts.

The application was made under section 40 of Trade Marks Act (Cap. 206) in response to the Registrar's refusal, because of the existence on the register of TM 63249, to proceed with the applicant's earlier application to register a trade mark consisting of an umbrella device in respect of all goods included in Class 25, including shirts, sweaters, slacks, jeans, jackets, rain proof clothing, headgear, stockings and socks.

The two issues before the Registrar were: (1) whether the applicant was a person aggrieved under section 40(1) of the Trade Marks Act, and (2) whether TM 63249 ought to be removed from the Register on the ground of non-user under section 40(1)(a) or (b).

The Registrar found that the applicant was not a person aggrieved within the meaning of section 40(1) of the Trade Marks Act as he was not engaged in the same trade as the respondents. Neither had he established how he may be damaged or injured if the trade mark TM 63249 was allowed to stand. The applicant filed this originating motion seeking to reverse the decision of the Registrar.

Held: (1) the applicant must show that he has used his trade mark in the course of a trade which is the same as or